

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:

VICTORIA HARRIS,

Complainant,

and

ILLINOIS STATE UNIVERSITY,

Respondent.

CHARGE NO: 2006SA0138

EEOC NO: 21BA52670

ALS NO: S09-0198

RECOMMENDED ORDER AND DECISION

This matter comes to me on a motion by Complainant to dismiss the instant case. Respondent has not filed a response, although the time for doing so has expired. Accordingly, this matter is ready for a decision.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. On July 16, 2005, Complainant filed a Charge of Discrimination on her own behalf alleging in multiple counts that she was the victim of handicap and age discrimination with respect to Respondent's assignment of duties upon her return to work, as well as in her pay.
2. At some point in time, the Department of Human Rights determined that there was a lack of substantial evidence as to most of Complainant's claims, and that some of Complainant's claims were not timely filed.
3. On April 21, 2009, Complainant filed a Complaint of Discrimination, alleging that she was the victim of handicap discrimination. Complainant's Complaint raised portions of her claims that the Department had not timely resolved during its investigation.

Conclusion of Law

1. Complainant may dismiss a portion of her claims against Respondent in order to advance an appeal of a Department of Human Rights Order that dismissed other aspects of her claims against Respondent.

2. Should Complainant prevail in her appeal as to portions of her claims dismissed by the Department of Human Rights, she may not resurrect the dismissed portion of the case contained in the instant Complaint in any subsequently filed complaint with the Commission.

Discussion

In her motion to dismiss, Complainant states that she filed a Charge of Discrimination and several amendments thereto alleging handicap and age discrimination with respect to several of her job assignments upon her return to work from a medical leave and with respect to a reduction in her pay. During its investigation, the Department of Human Rights found a lack of substantial evidence with respect to some of Complainant's claims, and that other claims were not timely filed. The Department also failed to timely complete its investigation as to other claims contained in Complainant's Charge of Discrimination, and Complainant has filed her own Complaint with the Commission that covers the claims not fully investigated by the Department of Human Rights. Accordingly, Complainant seeks a dismissal of her Complaint filed with the Commission in order to effectuate an appeal of the Department's actions taken with respect to the claims in which the Department found a lack of substantial evidence and/or a lack of timeliness.

In view of the lack of an objection, I will recommend that the motion be granted with the understanding that should Complainant prevail on her appeal, she may not resurrect the allegations contained in the instant Complaint in any subsequently filed complaint. Moreover, I note that the Commission typically dismisses the underlying charge of discrimination whenever dismissing a complaint. However, because the Commission's jurisdiction ends whenever a charge is dismissed, I recommend that the underlying Charge of Discrimination not be

dismissed so that Complainant can proceed on her Charge of Discrimination should she prevail on her appeal and subsequently file a Complaint with the Commission.

Recommendation

It is recommended that Complainant's motion to dismiss be granted, but that the underlying Charge of Discrimination be left intact until after resolution of Complainant's appeal.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 31ST DAY OF AUGUST, 2009